

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

HOWARD JEFFERSON ATKINS,)
PETITIONER,)

vs.)
JAMES HOLLOWAY, WARDEN,)
RESPONDENT.)

CASE NO. 09-2297-JTA-Tmp

RECEIVED
NOV 30 2015
U.S. DISTRICT COURT
W.D. OF TENNESSEE
ATKINS, HOWARD JEFFERSON
PETITIONER

MOTION FOR SUMMARY JUDGMENT

- or -

MOTION TO COMPEL THE RESPONDENT TO PROVIDE
THE PETITIONER WITH A COPY OF HIS BRIEF

COMES NOW, HOWARD J. ATKINS, Pro se Petitioner, and presents this Motion for Summary Judgment due to the Respondent's failure to timely file a responsive brief in this matter; or, if the Respondent has filed such brief, Petitioner presents this as a Motion to Compel the Respondent to provide Petitioner with a copy of said brief. In support of this motion, Petitioner presents the following:

1. On August 3, 2015, the Court set a briefing schedule in this cause.
2. The Petitioner's brief was due August 15, 2015 (only 12 days later). It was timely filed.
3. The Respondent's brief was due September 15, 2015 (30 days later).
4. On September 14, 2015, Respondent requested, and was granted, a 45 day extension, making its brief due October 30, 2015.
5. On October 27, 2015, the Respondent requested an additional 30 day extension. Notably, the Respondent

- did not provide Petitioner with a copy of this request.
6. Respondent was only granted 20 days with no further extensions absent extraordinary circumstances, making its brief due November 19, 2015. (Doc. entry #59)
 7. To this date, November 23, 2015, Petitioner is unaware of any responsive brief filed by the Respondent.
 8. If Respondent has failed to file a responsive brief (or has failed to file by the November 19 deadline), Respondent has waived any argument as to the issue at bar. Summary judgment for the Petitioner would therefore be appropriate.
 9. IF, on the other hand, Respondent has timely filed a responsive brief, Respondent has acted in bad faith by not providing the Petitioner with a copy. Petitioner would therefore request this Court compel the Respondent to provide Petitioner with a copy of its responsive brief, and thereafter that the Court would provide the Petitioner with adequate time to review the brief for possible preparation of a traverse.
 10. Petitioner opposes any further extensions being granted to Respondent (as indeed the Court has stated there will be none). Heavy workload is not a valid reason for extension, much less an extraordinary circumstance.

Wherefore, premises considered, Petitioner prays this Honorable Court accept this motion as well-taken and grant relief requested herein as would be determined by existing circumstances.

¹ - The institution where Petitioner resides is currently on security lockdown, depriving him of the ability to cite to case law or statute, and necessitating a hand-written motion.

Respectfully submitted,

D.W. Atkins

Howard J. Atkins #327480
W.T. S.P. Site 1
P.O. Box 1150
Hennings, TN 38044-1150

CERTIFICATE

OF

SERVICE

I, Howard J. Atkins, do hereby certify that a true and exact copy of the foregoing was sent via first class mail, postage prepaid to the following individual(s):

Michael M. Stahl, Asst. Atty. Gen.
P.O. Box 20207
Nashville, TN 37202

This the 23rd day of November, 2015.

D.W. Atkins

Howard J. Atkins